BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.88.101, 37.88.901, 37.88.1116, and 37.89.103 pertaining to case management services for youth with serious emotional disturbance	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On June 21, 2007, at 10:00 a.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 11, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3701 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, DEFINITIONS (1) remains the same.

~~(2) "Assistance in daily living" means the ongoing monitoring of how a client is coping with life on a day-to-day basis and the provision of assistance by a case manager which supports a client in daily life. Assistance with daily living skills includes but is not limited to:~~

~~(a) assistance with shopping and budgeting;~~

~~(b) teaching use of public transportation and other resources;~~

~~(c) monitoring and tutoring with regard to health maintenance; and~~

~~(d) monitoring contact with family members.~~

~~(3)~~ (2) "Case planning" means the development of a written individualized strength based case management plan based on the assessment. The case management plan must also include a crisis plan. The case management plan for the client ~~which is arrived at~~ is developed by the case manager with the participation of:

(a) remains the same.

(b) the client advocate if requested by the parent, legal guardian, or youth;

(c) and (d) remain the same.

(4) through (4)(g) remain the same but are renumbered (3) through (3)(g).

(4) "Crisis plan" means an individualized plan for the client that identifies potential problems that, if left unaddressed, may lead to the client experiencing a mental health crisis. This must include, but is not limited to:

(a) helping the client and family identify what to do when a mental health crisis occurs;

(b) identifying specific resources for the client and family prior to a mental health crisis;

(c) informing the client and family of the case manager's sub crisis role in responding to a crisis;

(d) informing the client and family of the other treatment team member's roles in responding to a crisis;

(e) informing the client and family of the mental health center's crisis telephone service; and

(f) assisting the client and family in developing the necessary skills to manage some of their own crises.

~~(5) "Crisis response" means immediate action by an intensive case manager or care coordination case manager for the purpose of supporting or assisting a client or other person in response to a client's mental health crisis. Crisis response must be made in a manner consistent with the least restrictive alternative measures or settings available for the client's condition. Crisis response may include contact with a client's family members if necessary and appropriate.~~

(5) "Crisis response" means the immediate action taken by an individual trained to respond to mental health emergencies when a person presents as a danger to self or others. A case manager must take immediate action to contact an appropriately trained individual or emergency responder if they believe a client presents a danger to self or others. Crisis response must be made in a manner consistent with the least restrictive alternative measures or settings available for the client's condition. Crisis response may include contact with a client's family members if necessary and appropriate.

(6) "Monitoring and follow-up" means regular contacts by the case manager with the youth and their family or caregivers, and their service providers to assure the appropriateness of services to the youth/family. Monitoring is used to identify and address concerns which may create barriers to services, and to assure the youth receives services as indicated in the case plan.

(7) "Sub crisis response" means timely action taken by a case manager for the purpose of supporting or assisting a client and family with urgent problems that if left unaddressed could lead to the client experiencing a mental health crisis.

(8) "Timely action" means the support or assistance is provided in a time frame consistent with the nature of the problem in an attempt to prevent a crisis.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, MCA

37.86.3702 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) remains the same.

(2) "Serious emotional disturbance (SED)" means with respect to a youth

between the ages of six and 17 years that the youth meets requirements of (2)(a) and ~~either~~ (2)(b) ~~or (2)(c)~~.

(a) The youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:

(i) through (xvii) remain the same.

(xviii) bulimia nervosa (severe) (307.51); and

(xix) intermittent explosive disorder (312.34)~~; and~~.

~~(xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.~~

(b) through (b)(vi) remain the same.

~~(c) In addition to mental health services, the youth demonstrates a need for specialized services from at least one of the following human service systems during the previous 6 months:~~

~~(i) education services, due to the diagnosis determined in (a), as evidenced by identification as a child with a disability as defined in 20-7-401(4), MCA with respect to which the youth is currently receiving special education services;~~

~~(ii) child protective services as evidenced by temporary investigative authority, or temporary or permanent legal custody;~~

~~(iii) the juvenile correctional system, due to the diagnosis determined in (2)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or~~

~~(iv) current alcohol/drug abuse or addiction services as evidenced by participation in treatment through a state-approved program or with a certified chemical dependency counselor.~~

(d) through (d)(vi) remain the same but are renumbered (c) through (c)(vi).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, MCA

37.86.3705 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE COVERAGE (1) Case management services for youth with serious emotional disturbance include:

(a) and (b) remain the same.

~~(c) assistance in daily living;~~

~~(d)~~ (c) coordination, referral~~,~~ ~~and~~ advocacy~~;~~, and crisis and sub crisis response; and

~~(e) crisis response.~~

(d) monitoring and follow-up.

(2) Case management services for youth with serious emotional disturbance are provided by a licensed mental health center with a case management endorsement in accordance with these rules and the provisions of Title 50, chapter 5, part 2, MCA, and implementing rules.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-113, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) Mental health services for a Medicaid ~~recipient~~ youth under the Montana Medicaid program will be reimbursed only if the following requirements are met:

~~(a) the recipient is a youth who has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702;~~

(a) the client has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702, with the following exceptions:

(i) a youth is not required to have a serious emotional disturbance for group outpatient therapy or the first 24 sessions of individual and family outpatient therapy services per state fiscal year, unless they are provided concurrently with a service requiring prior authorization or comprehensive school and community treatment. Youth must have a mental health diagnosis, as designated by the department, for group outpatient therapy and/or the first 24 sessions of individual and family outpatient therapy services per state fiscal year; or

~~(b)~~ (ii) the department has determined prior to treatment on a case by case basis that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance; or

~~(c) prior authorization has been obtained for outpatient therapy services that are provided concurrently with comprehensive school and community treatment (CSCT) program services described at ARM 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, 37.106.1965 and 37.86.2225; or~~

(b) for prior authorized services, the serious emotional disturbance has been determined by the department or its designee.

~~(d) the recipient is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM 37.86.3502.~~

~~(2) For all mental health services provided to a medicaid recipient under the age of 18, prior authorization is not required for the first 24 sessions of an individual or family outpatient service in the state fiscal year. Limitations for outpatient services are set forth in the fee schedule dated July 1, 2005. This rule does not apply to a session with a physician for the purpose of medication management.~~

(2) Prior authorization by the department or its designee is required for the following services for a Medicaid client who is a youth:

(a) individual or family outpatient therapy services in excess of 24 sessions per state fiscal year. Additional limitations for outpatient therapy services are set forth in the current fee schedule dated July 1, 2006. This rule does not apply to a session with a physician for the purpose of medication management;

(b) targeted case management in excess of 60 units of services per state fiscal year;

(c) all outpatient therapy services that are provided concurrently with comprehensive school and community treatment (CSCT) described at ARM 37.86.2224, 37.86.2225, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965; or

(d) as provided for in other rules.

(3) Mental health services for a Medicaid adult under the Montana Medicaid program will be reimbursed only if the following requirement is met:

(a) the client is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM 37.86.3502;

~~(3)~~ (4) For ~~all~~ mental health services provided to an adult Medicaid ~~recipient~~ client under the Montana Medicaid program, prior authorization is not required for the first 16 visits in the 12-month period beginning July 1, 2003 and each 12-month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology 4th Edition (CPT4) codes 90804, 90806, 90810, 90812, 90846, and 90847 only.

~~(4)~~ (5) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the requirements of ~~(4)(a)~~ (5)(a) or (b). The person must also meet the requirements of ~~(4)(c)~~ (5)(c). The person has:

(a) through (c) remain the same.

(5) through (7) remain the same but are renumbered (6) through (8).

~~(8)~~ (9) Review of authorization requests by the department or its designee will be made with consideration of the clinical management guidelines ~~(2004)~~ (2006). A copy of the clinical management guidelines ~~(2004)~~ (2006) can be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 (for adult services), or to the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 (for youth services) or can be viewed on the department's web site at ~~www.dphhs.mt.gov/aboutus/divisions/addictivementaldisorders/index.shtml~~ http://www.dphhs.mt.gov/amdd/index.shtml; or: http://www.dphhs.mt.gov/mentalhealth/children/index.shtml.

(9) and (10) remain the same but are renumbered (10) and (11).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.88.901 MENTAL HEALTH CENTER SERVICES, DEFINITIONS

(1) and (2) remain the same.

(3) "Child or adolescent" means a person 17 years of age and younger or a person who is under ~~21~~ 20 years of age and is enrolled in secondary school.

(4) through (18) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.88.1116 INPATIENT PSYCHIATRIC SERVICES, CERTIFICATION OF NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE

(1) Prior to admission and as frequently as the department may deem necessary, the department or its agents may evaluate the medical necessity and

quality of services for each Medicaid ~~recipient~~ client.

(a) In addition to the other requirements of these rules, the provider must provide to the department or its agent upon request any records related to services or items provided to a Medicaid ~~recipient~~ client.

(b) and (2) remain the same.

(3) Medicaid reimbursement is not available for inpatient psychiatric services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need for services that complies with the requirements of 42 CFR, Part 441, subpart D and these rules.

(a) For ~~recipients~~ clients determined Medicaid eligible by the department ~~as of~~ at the time of admission to the facility, the certificate of need must:

(i) remains the same.

(ii) be made by an independent team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the ~~recipient's~~ client's situation, including the ~~recipient's~~ client's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, a licensed mental health professional, ~~and, for residential psychiatric care, an intensive case manager employed by a mental health center~~ and for residential psychiatric care, an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services designated by the department. The case manager, or other individual designated by the department, must sign the certificate of need and indicate whether or not they believe the residential psychiatric care services are the least restrictive for treatment of the youth's serious emotional disturbance (based on their knowledge of community services). Authorization is not based on the case manager or other individual's support, or lack of support, for residential psychiatric care services.

(b) For ~~recipients~~ clients who are transferred between levels of inpatient psychiatric care within the same facility, the certificate of need may be completed by the facility-based team responsible for the plan of care within 14 days after admission provided that the:

(i) certificate of need has been signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department, for the reason stated above in this rule; and

(ii) remains the same.

(c) For ~~recipients~~ clients determined Medicaid eligible by the department after admission to or discharge from the facility, the certificate of need must:

(i) remains the same.

(A) 14 days after the eligibility determination for ~~recipients~~ clients determined eligible during the stay in the facility; or

(B) 90 days after the eligibility determination for ~~recipients~~ clients determined eligible after discharge from the facility;

(ii) cover the ~~recipient's~~ client's stay from admission through the date the certification is completed; and

(iii) be made by the facility team responsible for the ~~recipient's~~ client's plan of care as specified in 42 CFR, 441.155 and 441.156.

(d) and (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (14) remain the same.

(15) "Serious emotional disturbance (SED)" is defined in ARM 37.86.3702(2). ~~means with respect to a youth between the ages of six and 17 years that the youth meets the following requirements of (15)(a) and either (15)(b), or (15)(c):~~

~~(a) The youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:~~

~~(i) childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90);~~

~~(ii) oppositional defiant disorder (313.81);~~

~~(iii) autistic disorder (299.00);~~

~~(iv) pervasive developmental disorder not otherwise specified (299.80);~~

~~(v) Asperger's disorder (299.80);~~

~~(vi) separation anxiety disorder (309.21);~~

~~(vii) reactive attachment disorder of infancy or early childhood (313.89);~~

~~(viii) schizo affective disorder (295.70);~~

~~(ix) mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);~~

~~(x) obsessive-compulsive disorder (300.3);~~

~~(xi) dysthymic disorder (300.4);~~

~~(xii) cyclothymic disorder (301.13);~~

~~(xiii) generalized anxiety disorder (overanxious disorder) (300.02);~~

~~(xiv) posttraumatic stress disorder (chronic) (309.81);~~

~~(xv) dissociative identity disorder (300.14);~~

~~(xvi) sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89);~~

~~(xvii) anorexia nervosa (severe) (307.1);~~

~~(xviii) bulimia nervosa (severe) (307.51);~~

~~(xix) intermittent explosive disorder (312.34); and~~

~~(xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.~~

~~(b) As a result of the youth's diagnosis determined in (15)(a) and for a period of at least six months, or for a predictable period over six months, the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to intellectual, sensory, or health factors:~~

~~(i) has failed to establish or maintain developmentally and culturally appropriate relationships with adult care givers or authority figures;~~

~~(ii) has failed to demonstrate or maintain developmentally and culturally appropriate peer relationships;~~

~~(iii) has failed to demonstrate a developmentally appropriate range and expression of emotion or mood;~~

~~(iv) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic or recreation settings;~~

~~(v) has displayed behavior that is seriously detrimental to the youth's growth, development, safety or welfare, or to the safety or welfare of others; or~~

~~(vi) has displayed behavior resulting in substantial documented disruption to the family including, but not limited to, adverse impact on the ability of family members to secure or maintain gainful employment.~~

~~(c) In addition to mental health services, the youth demonstrates a need for specialized services from at least one of the following human service systems during the previous six months:~~

~~(i) education services, due to the diagnosis determined in (15)(a), as evidenced by identification as a child with a disability as defined in 20-7-401(4), MCA with respect to which the youth is currently receiving special education services;~~

~~(ii) child protective services as evidenced by temporary investigative authority, or temporary or permanent legal custody;~~

~~(iii) the juvenile correctional system, due to the diagnosis determined in (15)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or~~

~~(iv) current alcohol/drug abuse or addiction services as evidenced by participation in treatment though a state-approved program or with a certified chemical dependency counselor.~~

~~(d) Serious emotional disturbance (SED) with respect to a youth under six years of age means the youth exhibits a severe behavioral abnormality that cannot be attributed to intellectual, sensory, or health factors and that results in substantial impairment in functioning for a period of at least six months or is predicted to continue for a period of at least six months, as manifested by one or more of the following:~~

~~(i) atypical, disruptive or dangerous behavior which is aggressive or self-injurious;~~

~~(ii) atypical emotional responses which interfere with the child's functioning, such as an inability to communicate emotional needs and to tolerate normal frustrations;~~

~~(iii) atypical thinking patterns which, considering age and developmental expectations, are bizarre, violent, or hypersexual;~~

~~(iv) lack of positive interests in adults and peers or a failure to initiate or respond to most social interaction;~~

~~(v) indiscriminate sociability (e.g., excessive familiarity with strangers) that results in a risk of personal safety of the child; or~~

~~(vi) inappropriate and extreme fearfulness or other distress which does not respond to comfort by care givers.~~

(16) through (17)(a)(ii) remain the same.

(18) "Youth" means a person 17 years of age and younger or a person who is under 20 years of age and is enrolled in secondary school ~~an individual who has~~

~~not yet attained 18 years of age, except that for purposes of the definition of serious emotional disturbance, "youth" may include an individual who has not yet attained 21 years of age if the person is enrolled in a full-time special education program~~.

(19) The department adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the ~~St. Anthony's~~ Ingenix ICD-9-CM Code Book ~~(1998) effective October 1, 1998 through September 30, 1999~~ (2006) valid October 1, 2006 through September 30, 2007, published by ~~St. Anthony Publishing~~ Ingenix. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision ~~(1994)~~ (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated herein in order to provide common references for purposes of the provision of services through the mental health services plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 (for adult services) or the Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, PO Box 202951, Helena, MT 59620-2951 (for youth services).

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202, 53-21-701, MCA

3. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.88.101, 37.88.901, 37.88.1116, and 37.89.103 pertaining to Medicaid reimbursement for services to children with serious emotional disturbances. The proposed amendments are intended primarily to allow improved treatment management through utilization review of children's targeted case management. The department is also proposing amendments to the definition of "serious emotional disturbance" (SED), the definition and functions of "targeted case management" (TCM), and the certificate of need requirement for residential psychiatric care to be consistent with the standards set by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). CMS is the federal agency responsible for administration of the Medicaid program. The department is also proposing to change the requirement that a youth needs to have a serious emotional disturbance for the first 24 individual and family outpatient therapy sessions in a state fiscal year, to allow for the treatment of milder mental health diagnoses. The department is taking this opportunity to repeal outdated language and to improve language consistency among the rules. The specific changes proposed for each rule and the department's reasoning are described below.

ARM 37.86.3701

The department proposes to make the definitions in this rule and service coverage for Targeted Case Management for Seriously Emotionally Disturbed Youth consistent with the core functions currently billable under Medicaid. As defined by CMS, these functions include assessment; case planning; coordination, referral, and advocacy; and monitoring and follow-up. "Assistance in daily living" is currently defined as a case management service. The department is proposing its repeal because it is not a core function of targeted case management.

The department is proposing an amendment to the definition of "case planning" to include the descriptive term "strength based". The department wishes to emphasize the importance of focusing on strengths to empower families. The department is proposing an amendment to the case planning definition that would make the participation of a client advocate optional upon the request of a youth, parent, or legal guardian. This amendment is necessary because not all youth have a client advocate.

The department is also proposing to add a crisis plan component to the case management plan. The crisis plan would need to be developed by the client, family, and service providers to plan in advance how to respond to the client's mental health crises and to assist the client and family to develop the necessary skills to manage some of their own crises.

The department is proposing to revise the definition of "crisis response" for case management from "crisis response" to "sub crisis response" and require the case manager to respond "timely" instead of "immediately". The response time should be consistent with the nature of the problem that if left unaddressed, could lead to the client experiencing a mental health crisis. The case manager's response to a less urgent crisis or sub crisis does not have to be immediate.

A new definition of "Crisis response" is being proposed. "Crisis response" has been redefined as an individual specifically trained to respond to mental health emergencies, to distinguish it from the role of the case manager. The case manager must take immediate action to contact emergency responders or appropriately trained individuals they believe present a danger to self or others.

A new definition for "crisis plan" is also being proposed. Goals of the crisis plan have been outlined in the new definition. The crisis plan is developed in conjunction with the case management plan. The goals of the crisis plan are to identify potential problems that may escalate into a crisis, to help the client and family identify what to do when a mental health crisis occurs, to identify specific resources prior to a crisis, and for the client and family to develop the skills necessary to manage some of their own crises. If the client or parent cannot implement the crisis plan without assistance, they may need to call the mental health center's crisis telephone service, mental health professional identified in the TCM crisis plan, or emergency responders.

The department is proposing a new definition, "monitoring and follow-up" for a fourth core case management function. This function is defined to include regular contact with the youth and identifying and addressing barriers to service.

The proposed amendments are necessary because, in 2001, a letter to State Child Welfare and State Medical Directors from Olivia Golden, Assistant Secretary for Children and Families and Timothy Westmoreland, Director of the Center for Medicaid and State Operations, CMS provided a definition of case management services. While CMS has not specifically defined case management services in regulations, activities commonly understood to be allowable include: (1) assessment of the eligible individual to determine service needs; (2) development of a specific care plan; (3) referral and related activities to help the individual obtain needed services; and (4) monitoring and follow-up. The Deficit Reduction Act of 2005 (DRA), Public Law No. 109-171, also lists these four core TCM functions and expands on their definition.

ARM 37.86.3701 currently includes services that are not consistent with the federal definitions. Furthermore, the current rules do not list monitoring and follow-up as a stand alone TCM service, although it is referenced as part of coordination, referral, and advocacy. By making the rule more consistent with CMS definitions, the proposed amendments would improve the direction to providers in how case management services are to be delivered. This reduces the chance that providers will bill for services for which Medicaid does not reimburse. It also reduces the risk that providers would be required to return overpayments due to inappropriate billing. It also clarifies the services that SED youth are entitled to and provides improved guidance for providers in delivery of those services.

The department considered and rejected the alternative of not changing ARM 37.86.3701. The department determined the risk of inappropriate billing for targeted case management services and the potential financial effects of overpayment recovery on providers are sufficient to justify amendment of the rule.

ARM 37.86.3702

The current definition of a serious emotional disturbance (SED) limits eligibility for SED services to youth who meet the diagnostic criteria and demonstrate a need for specialized services from at least one of the listed human service systems in the previous six months. The department has determined that such limitation is unnecessary. The diagnosis requirement and the disability requirement adequately define SED for youth ages 6-17 years old. The department is proposing the repeal of the requirement that SED youth demonstrate a need for services from one of the listed human services systems.

The department is also proposing the deletion of attention deficit/hyperactivity disorder (ADHD) as criteria for SED when accompanied by at least one of the other diagnoses in the rule. Since ADHD is not a stand alone diagnosis, its inclusion in the rule is superfluous and tends to cause confusion among providers.

The department considered and rejected definitions of SED established by Congress, the Department of Education, and the Social Security Administration. The Alcohol, Drug Abuse and Mental Health Administration Reorganization Act, 42 U.S.C. 290aa (1992), established a block grant for community mental health services for children with SED. For purposes of the act, the term "serious emotional disturbance" included, "with respect to a child, any child who has a serious emotional disorder, a serious behavioral disorder, or a serious mental disorder." The U.S. Department of Education's definition, which for purposes of assistance to states for the education of children with disabilities is referred to as an "emotional disturbance", at 34 CFR 300.8 describes a condition exhibiting one or more of four characteristics "over a long period of time and to a marked degree that adversely affects a child's educational performance". The Social Security Administration's eligibility standards at 20 CFR 416.924 for the children's Supplemental Security Income program include the presence of a medically determinable severe condition that results in marked and severe functional limitations of substantial duration.

Although each definition contains elements useful in identifying an emotional disturbance, none contain sufficient detail to provide a practical means of determining which diagnoses should be considered severe. The department is proposing a definition of SED that continues to include specific mental health diagnoses recognized by mental health services providers. None of the alternative SED definitions require a demonstrated need for services from a human services system. Therefore, the department is proposing repeal of that requirement.

The department considered and rejected the alternative of retaining the requirement that a youth receive services from more than one agency in order to be determined SED. The department is concerned that such a requirement could result in Medicaid disallowing payment for SED services for a youth who does not need intervention from another source yet needs mental health services.

ARM 37.86.3705

The department is proposing amendments to this rule governing TCM for SED youth that would make it consistent with the core functions that are currently billable under Medicaid. The functions defined by CMS are: assessment; case planning; coordination, referral, and advocacy; and monitoring and follow-up. "Assistance in daily living" is currently defined as a case management service, but is not a core function of targeted case management. Therefore, the department is proposing its deletion from this rule. Crisis planning is a part of case management, but is not a stand alone, billable activity. Therefore, the department is proposing that it also be deleted from this rule.

This rule governs the service coverage for SED youth. The department is proposing these amendments to make it consistent with the proposed definitions in ARM 37.86.3701. Crisis and sub crisis response planning would be added to the existing coordination, referral, and advocacy services. The "crisis response" function would

be deleted and replaced with "monitoring and follow-up".

The department is taking this opportunity to insert the phrase, "with a case management endorsement", to specify in this rule that only mental health centers with such an endorsement are allowed to provide case management services. The department intends this amendment to reflect current practice and policy. It is not intended to be a substantive change.

A 2001 letter to State Child Welfare and State Medical Directors from Olivia Golden, Assistant Secretary for Children and Families and Timothy Westmoreland, Director of the Center for Medicaid and Operations, Center for Medicare and Medicaid Services (CMS), provided a definition of case management services. The letter stated that while CMS has not specifically defined case management services in regulations, activities commonly understood to be allowable include:

(1) assessment of the eligible individual to determine service needs,
(2) development of a specific care plan,
(3) referral and related activities to help the individual obtain needed services, and
(4) monitoring and follow-up.

The DRA amended section 1915(g) of the Social Security Act (42 U.S.C. 1396n(g)(2)) to include these four core TCM functions.

The proposed amendments to ARM 37.86.3705 are necessary to make it consistent with the definitions proposed in ARM 37.86.3701. The current rule does not list monitoring and follow-up as a stand alone service, although it is referenced as part of (4) coordination, referral, and advocacy. The proposed changes would make TCM consistent with the CMS definition and would improve the understanding of providers and the public about case management services. It would reduce the chance that providers might bill for services Medicaid will not reimburse. It can be burdensome to providers and the department when reimbursement must be recovered due to inappropriate billing.

The department considered and rejected the alternative of not changing ARM 37.86.3701. The department determined the risk of inappropriate billing for targeted case management services and the potential financial effects of overpayment recovery on providers are sufficient to justify amendment of the rule.

ARM 37.88.101

In Montana, the determination of who is SED is done by a variety of agencies and practitioners. As a result, interpretation and application of the current definition is not consistent. The department is proposing that, to be eligible for prior authorized Medicaid mental health services, the department or its designee must determine if a youth is SED. This would result in greater consistency and accuracy in those determinations.

The department is proposing to change the requirement that a youth has to have a serious emotional disturbance for the first 24 sessions of individual and family outpatient therapy services in a state fiscal year. To receive additional individual and family outpatient therapy services, beyond 24 in a state fiscal year, the youth would need to have a serious emotional disturbance. This change is being proposed to intervene earlier and allow for the treatment of milder mental health diagnoses.

Over the past several years, the costs related to TCM for SED youth have increased at a rate greater than the corresponding increase in the total number of SED youth served. The anticipated corresponding decrease in other services, such as residential treatment, has not occurred. The department has determined that steps are necessary to assure that TCM services are being used appropriately. To improve resource management, the department is proposing that TCM be added to the list of services that require prior authorization.

The department is taking this opportunity to replace the term "recipient" throughout the rule with the word "client" to be consistent with the language in other administrative rules. No substantive change is intended by the proposed amendments.

The department is also taking this opportunity to list children's mental health services that require prior authorization. This proposal would make it easier for providers to identify those services and to comply with the prior authorization procedures. It should also reduce the potentially harmful financial effects of inappropriate billing.

The department is proposing an amendment to this rule that would reformat the list of exceptions to the prior authorization requirement. This proposal should make them easier to read and understand.

The department is also proposing new provisions requiring prior authorization of targeted case management services. Targeted case management services would be subject to prior authorization after a client received 60 units of service in a state fiscal year. This proposal is intended to help the department manage Medicaid resources so that Montana youth with the greatest need will be able to access services. Improvement of program management is intended to assure the most effective and efficient use of services.

Incorporation of the clinical management guidelines by reference would be updated from 2004 to 2006.

The Children's Mental Health Bureau (CMHB) that oversees TCM services has had an increasing budget overrun in part due to an increase in TCM services.

Moving to utilization review for TCM would help insure that only children who meet the state’s SED definition are receiving services. TCM services increased 12% in SFY 2006 from SFY 2005. The rate of reimbursement paid to qualified providers for

targeted case management of $48 per hour ($12 per 15 minute unit) has not changed during this period of time.

If TCM services were being used effectively, it could be expected that the number of youth in out-of-state and in-state residential psychiatric care and other out–of-home services would be decreasing. Residential psychiatric care was up 17% from SFY 2005 to SFY 2006. The rate of reimbursement for residential psychiatric care was increased 6% during this time period.

This data suggests TCM services are not as effective as they could be. The department is proposing closer monitoring of these services. Closer monitoring should be a cost effective way to assure the efficient use of funds. It would also help achieve the appropriate outcomes for case management, family independence, and self-management of a youth's mental illness. The department is proposing these ARM changes to implement a prior authorization process in order to gather essential management information and to monitor TCM to assure effective and efficient use of services.

The department has determined that there is a wide variation in the interpretation of what it means to qualify as a youth with a serious emotional disturbance (SED). To improve the application of criteria for SED determination, the department is proposing that it or its designee make the determination whether a particular Medicaid client qualifies as SED when receiving prior authorized services.

The proposed rule changes would allow the state to oversee the determination of SED for youth receiving prior authorized services and would add TCM to the services that require prior authorization. These changes would allow CMHB to better manage Medicaid resources so that Montana youth with the greatest need will be able to access services. It would also improve program management to assure the most effective and efficient use of services.

The department considered and rejected other options for addressing the projected cost of Medicaid TCM services. The department could have conducted extensive postpayment utilization review audits to determine if each youth was accurately designated SED and whether each TCM service was justifiable and used appropriately. If a service was found to be unjustified or inappropriate, the department would require the provider to pay back Medicaid funds that it had already received.

The department decided against this option because of the cost of implementing this type of on-site review. CMHB also wanted to avoid the potentially harmful effects on providers who would be required to return Medicaid payments when services were determined to be unwarranted. Such payments could be sizeable, which could put additional financial strain on individual providers and small provider groups. This could have resulted in fewer providers and difficulty accessing services for Medicaid eligible SED youth.

The department also considered and rejected the option of across-the-board rate reductions or eligibility restrictions for all children's mental health services. The department determined it would be inequitable to make across-the-board cuts in rates or eligibility. The department believes that utilization review of specific services will be sufficient to manage resources for those most in need without creating hardships for all CMHB programs or certain populations.

ARM 37.88.901

The definition of "child and adolescent" is being changed to be consistent with the definition of "youth" found in ARM 37.89.103 regarding the age of youth being served. The age has been changed in both rules to read "under 20" rather than 21. Serving youth through 19 would cover most youth attending secondary school.

ARM 37.88.1116

The requirement that an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department sign the certificate of need (CON) for residential psychiatric care services remains in the rule. However, the intensive case manager or other individual designated by the department will be required to indicate on the CON whether or not they believe there are less restrictive services available to treat the youth's serious emotional disturbance, based on their knowledge of community services. Their signature is required on the CON, but not required for authorization of residential psychiatric care. This change is being made to be consistent with 42 CFR, part 441 D and clarify the role of the intensive case manager or other individual's signature on the CON.

The department is taking this opportunity to replace the term "recipient" throughout the rule with the word "client" to be consistent with the language in other administrative rules. No substantive change is intended by the proposed term.

ARM 37.89.103

The definition of a serious emotional disturbance (SED) found in ARM 37.89.103 Mental Health Services Plan, Definitions is being changed to be consistent with the SED definition change in ARM 37.86.3702 for the reasons stated above for ARM 37.86.3702.

The definition of "youth" is being changed to be consistent with the definition of "child and adolescent" found in ARM 37.88.901, with regard to a person "enrolled in secondary school" versus "enrolled in a full-time special education program". The age limit is being changed in ARM 37.88.901 and 37.89.103 to read "under 20" rather than 21 to serve youth in the Medicaid and Mental Health Service Plan through age 19. Serving youth through age 19 would cover most youth attending secondary school.

Estimated Budget Effects

By prior authorizing TCM services over 60 units once in a SFY, the department would save approximately $333,938 if the number of units billed were reduced 10%.

Persons and Entities Affected

There are 9,551 Medicaid eligible individuals under 18 years of age who have been identified as having a serious emotional disturbance. Approximately 3,456 of them received TCM in SFY 2006. Approximately 60% would need prior authorized TCM. If 10% of the TCM prior authorized services were not medically necessary, 217 youth could be affected by the proposed rules.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 28, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

6. The bill sponsor notice requirements of 2-4-302, MCA, do not apply. This proposal notice does not initially implement new or amended legislation.

/s/ John Koch
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and Human Services

Certified to the Secretary of State May 14, 2007.